

NOTE

This 1997 Supplement to Digest of Utilities Cases is published by the Washington Utilities and Transportation Commission. It includes cases decided in calendar 1995 and 1996 only. It supplements the 1995 Digest of Utilities Cases.

Accompanying this 1997 Supplement is a cumulative case list, listing orders headnoted in both the 1995 Digest and the 1997 Supplement. The case list is for use with both publications.

You may discard the Table of Cases in the 1995 Digest (pages 173-190), and may discard the 1996 Supplement.

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TITLE 47 U.S.C.

TELEGRAPHS, TELEPHONES, AND RADIO TELEGRAPHS

GTE is a rural telephone company under §3(a)(47)(C) of the 1996 Telecommunications Act with respect to its Contel Study Area. 47 U.S.C. §§ 153(a)(47)(C), 251(f)(1). In re GTE Northwest Incorporated, Docket No. UT-960324, Second Supplemental Order (December 1996).

A telephone company which does not claim the rural telephone company exemption from the interconnection requirements of sec 251(c) of the 1996 Telecommunications Act until after commencing negotiations with a new entrant is estopped from claiming the exemption. 47 U.S.C. § 251(f)(1)(B). In re GTE Northwest Incorporated, Docket No. UT-960324, Second Supplemental Order (December 1996).

A telephone company which does not claim the rural telephone company exemption from the interconnection requirements of § 251(c) of the 1996 Telecommunications Act until after commencing negotiations with a new entrant violates its statutory duty to negotiate in good faith. If the company was negotiating in good faith, it waived its claim to the exemption. 47 U.S.C. §§ 251(c)(1); 251(f)(1)(B). In re GTE Northwest Incorporated, Docket No. UT-960324, Second Supplemental Order (December 1996).

Section 251(f)(1) of the 1996 Telecommunications Act, which exempts “rural telephone companies” from the interconnection requirements of §251(c) of the Act, allows any telecommunications company to qualify as a “rural telephone company” to the extent it qualifies under any of five criteria. 47 U.S.C. §§ 153(a)(47)(C), 251(f)(1). In re GTE Northwest Incorporated, Docket No. UT-960324, Second Supplemental Order (December 1996).

The Commission is concerned, consistent with state and federal law, that competition be nurtured. However, the Commission finds no obligation to direct that rates be structured to foster the profitability of reselling. 47 U.S.C. § 151, *et seq.*; RCW 80.36.300. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighteenth and Nineteenth Supplemental Orders (December 1996).

The Commission may determine general principles applicable to several ongoing proceedings in a generic proceeding. Telecommunications Act of 1996; RCW 80.36.140. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

The Commission will make decisions regarding the implementation of local telecommunications competition in Washington state in accordance with the Telecommunications Act of 1996 and consistent with the Commission’s announced policies and orders. Decisions regarding pricing policy will be made on this basis, and the Commission will not limit its deliberations in arbitrations under the 1996 Act to methodologies adopted by the FCC. Telecommunications Act of 1996; RCW 80.36.140. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

Title 47 U.S.C. (continued)

The Commission generally will not allow intervention in an arbitration under the Telecommunications Act of 1996. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

Under section 251(d)(3) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 St. 56 ("1996 Act"), this Commission has broad authority to proceed with implementing any Commission regulation, order, or policy that establishes access and interconnection obligations of local exchange carriers; is consistent with the requirements of section 251 of the 1996 Act; and does not substantially prevent implementation of the requirements of section 251 and the purposes of the portion of the 1996 Act dealing with development of competitive markets. WUTC v. U S WEST Communications, Inc., and consolidated U S WEST and GTE interconnection dockets, Docket Nos. UT-941464 et al., Eleventh Supplemental Order (May 1996).

CHAPTER 34.05 RCW

ADMINISTRATIVE PROCEDURE ACT

RCW 34.05.010 Definitions.

A formal investigation and fact finding (FIFF) authorized by RCW 80.36.145 is not an adjudicative proceeding under the Administrative Procedure Act. RCW 34.05.010; RCW 80.36.145; WAC 480-09-520. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-960248, Order rejecting pleadings (August 1996).

RCW 34.05.060 Informal settlements.

Cross References

- Settlement in adjudicatory proceedings: See WAC 480-09-465.

RCW 34.05.240 Declaratory order by agency--Petition--Court review.

The Commission cannot enter a declaratory order substantially affecting the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by declaratory order proceeding. RCW 34.05.240. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-961012 (October 1996).

The Commission will deny a petition for declaratory order when the petition and supporting statement of fact do not support entry of a declaratory order with respect to the applicability to specified circumstances of a rule, order, or statute enforceable by the agency. RCW 34.05.240. In re MFS Communications Company, Inc., Docket No. UT-960854 (October 1996).

The Commission will not issue a declaratory order on a hypothetical question, where no actual case or controversy exists. Docket No. UG-960060, In the Matter of the Petition of Sumas Cogeneration

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Company, L.P., for a Declaratory Order, Commission letter (April 1996).

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RCW 34.05.434 Notice of hearing.

The Commission's requirement of customer notice is intended to give customers notice that a significant rate increase is pending and reasonable notice of its general scope and magnitude so they may participate in the decision to suspend, which the Commission may make without hearing. It is not intended to amplify the legal requirements of notices of hearing or to grant additional procedural rights, nor is it intended -- nor can it in practice -- list every potential rate change. RCW 34.05.434; RCW 80.04.110; WAC 480-80-125. WUTC v. U S WEST Communication, Inc., Docket No. UT-950200, Twelfth Supplemental Order (January 1996).

RCW 34.05.443 Intervention.

It is entirely within the Commission's discretion to grant or deny a petition to intervene. RCW 34.05.443; WAC 480-09-430. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Tenth Supplemental Order (October 1996).

It is within the Commission's discretion whether to grant or deny intervention. RCW 34.05.443; WAC 480-09-430. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fifth Supplemental Order (July 1996).

RCW 34.05.461 Entry of orders.

It is inappropriate in an answer to a petition for reconsideration to cite to facts that are not in the record. Because the Commission cannot lawfully consider evidence outside the record, it cannot allow parties to recite such asserted "facts" for its consideration. RCW 34.05.461; 480-09-810. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Seventh Supplemental Order (May 1995).

RCW 34.05.467 Stay.

Cross References

- Stay: See WAC 480-09-800.

RCW 34.05.470 Reconsideration.

Cross References

- Commission reconsideration of final orders: See WAC 480-09-810.

RCW 34.05.550 Stay and other temporary remedies.

When the superior court has authorized the filing of tariffs while it is reviewing a Commission order, the Commission will proceed cautiously in reviewing the tariffs that are filed, to avoid actions that are in possible derogation of the court's jurisdiction. RCW 34.05.550. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Seventeenth Supplemental Order (July 1996).

CHAPTER 80.01 RCW

UTILITIES AND TRANSPORTATION COMMISSION

RCW 80.01.040 General powers and duties of commission.

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.

In regulating in the public interest, it is appropriate for the Commission to state its current opinions concerning the expansion of competition in the electric industry and the principles that should guide the Commission in adapting its exercise of its regulatory authority to the changing competitive circumstances. RCW 80.01.040. In re Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry, Docket No. UE-940932 (December 1995).

The Commission states eight principles which should guide adaptation of the Commission's exercise of its regulatory authority to the more competitive circumstances facing the state's electricity industry. The Commission intends to use these principles in exercising its general regulatory duties and responsibilities and in developing its opinions and judgments concerning specific regulatory issues which it may be required to address. RCW 80.01.040; 80.28.020. In re Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry, Docket No. UE-940932 (December 1995).

The telecommunications industry itself should assume primary responsibility for reaching consensus on reasonable solutions to many of the issues surrounding local interconnection. However, the Commission realizes that the industry necessarily and appropriately looks to the Commission to provide some leadership and direction during the transition to a competitive industry structure. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

Compliance is the primary function of Commission penalty assessments and the aim of Commission enforcement efforts. RCW 80.01.040; 80.36.522. WUTC v. International Pacific, Inc., Docket No. UT-911482, Ninth Supplemental Order (January 1995).

CHAPTER 80.04 RCW

REGULATIONS--GENERAL

RCW 80.04.010 Definitions.

So long as a bypass pipeline is owned by and serves a single entity, or is owned jointly by all of the entities served, the pipeline owner or owners are not public service companies. In the Matter of the Petition of Sumas Cogeneration Company, L.P., for a Declaratory Order, Commission letter (April 1996).

RCW 80.04.015 Conduct of business subject to regulation--Determination by Commission.

RCW 80.04.015 does not grant the Commission jurisdiction to challenge possible regulatory activities of a public utility district or other governmental entity accused of undertaking regulatory activities. TCG Seattle, et al. v. GTE Northwest Incorporated and Snohomish County Public Utility District Number 1, Docket No. UT-941523 (April 1995).

RCW 80.04.095 Protection of records containing commercial information.

The purpose behind the confidentiality provision of RCW 80.04.095 and WAC 480-09-015 is to encourage the disclosure of information necessary to the prosecution of a case by reducing the risk that the information will be disclosed to persons able to use the information in a competitive or otherwise hostile manner toward the disclosing party. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighth Supplemental Order (October 1995).

RCW 80.04.110 Complaints--Hearings--Water systems not meeting board of health standards.

The Commission will dismiss a complaint if the complainant fails to present a prima facie case. RCW 80.04.110; WAC 480-09-420. GTE Northwest Incorporated v. Whidbey Telephone Company, Docket No. UT-950277, Fifth Supplemental Order (April 1996).

Universal service funds should not be used to protect a company's revenue stream while it underprices an entire class of service in order to establish or enhance a competitive position. Likewise, such funds should not be used to subsidize prices for targeted services or customers in order to gain a competitive advantage. RCW 80.04.110. GTE Northwest Incorporated v. Whidbey Telephone Company, Docket No. UT-950277, Fifth Supplemental Order (April 1996).

The Commission's requirement of customer notice is intended to give customers notice that a significant rate increase is pending and reasonable notice of its general scope and magnitude so they may participate in the decision to suspend, which the Commission may make without hearing. It is not intended to amplify the legal requirements of notices of hearing or to grant additional procedural rights, nor is it intended -- nor can it in practice -- list every potential rate change. RCW

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34.05.434; RCW 80.04.110; WAC 480-80-125. WUTC v. U S WEST Communication, Inc.,
Docket No. UT-950200, Twelfth Supplemental Order (January 1996).

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RCW 80.04.110, cont.

The telecommunications industry itself should assume primary responsibility for reaching consensus on reasonable solutions to many of the issues surrounding local interconnection. However, the Commission realizes that the industry necessarily and appropriately looks to the Commission to provide some leadership and direction during the transition to a competitive industry structure. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

Alternate operator service (AOS) companies need not be registered with the Commission as telecommunications companies in order to invoke the jurisdiction of the Commission to consider a complaint that a local exchange company is engaging in anticompetitive conduct in the provision of public payphone services. RCW 80.04.110; 80.36.080; 80.36.180. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

RCW 80.04.130 **Suspension of tariff change--Mandatory measured telecommunications service--Washington telephone assistance program service.**

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.

The Commission has the power to examine the proposed withdrawal of competitive services, to determine whether withdrawal would have anticompetitive or other impermissible effects. RCW 80.04.130; 80.36.330. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

RCW 80.04.130 allows the Commission to suspend a tariff filing that proposes to terminate an existing service. Termination of a service would have the "effect" of changing the rates and charges for service, in that its consequence is that customers will no longer be able to receive the service at the existing rates. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

The burden of proving that a proposed increase in rates is just and reasonable is on the public service company proposing the increase. RCW 80.04.130. WUTC v. U S WEST

Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

RCW 80.04.130, cont.

Regulated companies bear the burden of proving that their decisions are prudent. RCW 80.04.130. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-941408, Third Supplemental Order (October 1995).

Granting a petition for permission to file tariffs during the period of suspension is unusual relief. The Commission may grant it when the circumstances warrant the relief requested so long as practical protections are put in place to preserve the interests of the parties. RCW 80.04.130. WUTC v. Washington Natural Gas Company, Docket Nos. UG-940034 and UG-940814, Fourth Supplemental Order (March 1995).

The Commission's granting of a petition to file tariffs during the period of suspension does not constitute prejudgment of any material issue in the proceeding. RCW 80.04.130. WUTC v. Washington Natural Gas Company, Docket Nos. UG-940034 and UG-940814, Fourth Supplemental Order (March 1995).

RCW 80.04.250 **Valuation of Public Service Property.**

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Rate setting by Commission: See RCW 80.36.140 (telecommunications).
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Accounting: See WAC 480-90-031; 480-100-031; 480-110-031; 480-120-031.

Note: Headnotes that relate to ratebase issues in a ratemaking proceeding appear under this RCW.

When a company does not have accurate records of the depreciated value of its plant in service, the Commission may accept for ratemaking purposes an expert valuation, based on estimates of purchase and installation costs, which is credibly supported in the record. RCW 80.04.250; 80.28.040. WUTC v. Rosario Utilities, LLC, Docket No. UW-951483, Fourth Supplemental Order (November 1996).

CHAPTER 80.12 RCW

TRANSFERS OF PROPERTY

RCW 80.12.020 Order required to sell, merge, etc.

The Commission will strive to ensure that a proposed merger of two utility companies, only one of which has Washington customers, does not harm the one company's Washington ratepayers, and generally rejects the concept that single system pricing can or should be used in addressing interdivisional energy and capacity transactions in such a merger. If use of single system pricing information by any other jurisdiction affects allocation of revenues, expenses, rate base, or cost of capital to the detriment of Washington ratepayers, that effect will not be reflected in Washington results of operations for any purpose. RCW 80.12.020; RCW 80.28.020. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Ninth Supplemental Order (December 1995).

When surplus power sales are made by one post-merger division of a utility, using transmission facilities of the other division, compensation for the one division's use of the other division's facilities should be limited to market-based wheeling charges. If any margin is paid to the other division in addition to wheeling revenues, or is used by any other jurisdiction to affect allocation of revenues, expenses, rate base, or cost of capital, to the detriment of Washington ratepayers, that effect will not be reflected in Washington results of operations for any purpose. RCW 80.12.020; RCW 80.28.020. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Ninth Supplemental Order (December 1995).

RCW 80.12.040 Authority required to acquire property or securities of utility.

When two public service companies have canceled their agreement to merge, the Commission will withdraw its approval of the merger. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket Nos. UE-941053 and UE-941054, Tenth Supplemental Order (August 1996).

The Commission may authorize and approve a merger in accordance with the terms of a settlement agreement when it finds that the merger, under the terms set out in the settlement agreement, is consistent with the public interest. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Seventh Supplemental Order (September 1995).

In determining whether a sale of local telephone exchanges is consistent with the public interest, the Commission will consider, among other factors, the effects of the sale on customers in the sale exchange, on remaining customers of the purchaser, on remaining customers of the seller, and on interexchange carriers. RCW 80.12.040; WAC 480-143-020. In re Telephone Utilities of

Washington, Inc., d/b/a PTI Communications, Docket No. UT-940700; In re U S WEST Communications, Inc., Docket No. UT-940701, Third Supplemental Order (June 1995).

CHAPTER 80.28 RCW

GAS, ELECTRICAL, AND WATER COMPANIES

RCW 80.28.020 Commission to fix just, reasonable, and compensatory rates.

Cross References

- ▶ Rate setting for telecommunications companies: See RCW 80.36.140.
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Commission's control over expenditures: See RCW 80.04.300 -.310.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Temporary rates during suspension period: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025.
- ▶ Banded rates: See RCW 80.28.074 -.075.
- ▶ Accounting: See WAC 480-90-031 (gas); WAC 480-100-031 (electric); WAC 480-110-031 (water); WAC 480-120-031 (telecommunications).

-- Rate Setting Generally

The ultimate determination for the Commission in a rate proceeding is whether the rates and charges are fair, just, reasonable, and sufficient. These questions are answered by establishing the fair value of the company's plant for ratemaking purposes; determining the proper rate of return permitted to the company on that property; determining the company's costs of providing service; determining whether additional revenues are needed in light of the company's costs; and if there is a revenue deficiency, then determining how the additional revenues should be apportioned among the company's ratepayers. RCW 80.28.020. WUTC v. Rosario Utilities, LLC., Docket No. UW-951483, Fourth Supplemental Order (November 1996).

A tariff proposal for a new class of service at competitive prices that would be available only to an electric utility's largest volume customers raises concerns about whether the rates will be compensatory and whether there will be cost shifting and undue discrimination among customer classes. The Commission may approve such a tariff subject to conditions designed to result in rates, terms, and conditions that are fair, just, reasonable and sufficient, and to minimize any concern about unlawful discrimination. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket No. UE-960696 (October 1996).

The Commission supports the principle that all customer classes of continuing monopoly electric service should benefit, or at least not be harmed, from choices made by customers with access to competitive options. RCW 80.28.020. WUTC v. Puget Sound Power & Light Company, Docket No. UE-960696 (October 1996).

The Commission may authorize the transfer to general rate schedules of currently-collected rates authorized in a periodic rate adjustment proceeding upon a showing that the latter are fully supported

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by cost data. RCW 80.28.020. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Seventh Supplemental Order (September 1996).

RCW 80.28.020 (cont.)

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 80.28.020; WAC 480-09-465. In re Cascade Natural Gas Corporation, Docket No. UG-950326; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-951415; Fourth Supplemental Order (July 1996).

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 80.28.020; WAC 480-09-465. WUTC v. Washington Water Supply, Inc., d/b/a Whidbey West, Docket No. UW-950174, First Supplemental Order (January 1996).

When testimony in a hearing on whether the Commission should accept a settlement agreement regarding a water company's rates reveals water quality and service problems which the company verbally commits to improving, the Commission may include in an order accepting the proposed rates instructions to its staff to investigate problems with water quality and service, and to follow up as necessary to ensure compliance with Commission statutes and rules. RCW 80.28.020; 80.28.030; 80.28.040. WUTC v. Washington Water Supply, Inc., d/b/a Whidbey West, Docket No. UW-950174, First Supplemental Order (January 1996).

The Commission states eight principles which should guide adaptation of the Commission's exercise of its regulatory authority to the more competitive circumstances facing the state's electricity industry. The Commission intends to use these principles in exercising its general regulatory duties and responsibilities and in developing its opinions and judgments concerning specific regulatory issues which it may be required to address. RCW 80.01.040; 80.28.020. In re Examining Regulation of Electric Utilities in the Face of Change in the Electric Industry, Docket No. UE-940932 (December 1995).

The Commission will strive to ensure that a proposed merger of two utility companies, only one of which has Washington customers, does not harm the one company's Washington ratepayers, and generally rejects the concept that single system pricing can or should be used in addressing interdivisional energy and capacity transactions in such a merger. If use of single system pricing information by any other jurisdiction affects allocation of revenues, expenses, rate base, or cost of capital to the detriment of Washington ratepayers, that effect will not be reflected in Washington results of operations for any purpose. RCW 80.12.020; RCW 80.28.020. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Ninth Supplemental Order (December 1995).

When surplus power sales are made by one post-merger division of a utility, using transmission facilities of the other division, compensation for the one division's use of the other division's

facilities should be limited to market-based wheeling charges. If any margin is paid to the other division in addition to wheeling revenues, or is used by any other jurisdiction to affect allocation of revenues, expenses, rate base, or cost of capital, to the detriment of Washington ratepayers, that effect will not be reflected in Washington results of operations for any purpose. RCW 80.12.020;

RCW 80.28.020 (cont.)

RCW 80.28.020. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Ninth Supplemental Order (December 1995).

A Purchase Gas Adjustment proceeding is an inappropriate forum for review of non-FERC, non-open-market costs, such as contracts to purchase gas from customers that are part of a company's response to bypass threats. A better forum would be a general rate case, or a special proceeding. RCW 80.28.020. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-941408, Third Supplemental Order (October 1995).

The Commission will accept a settlement agreement as to the appropriate level of a utility's rates when the proposed rates are cost-based, the proposal produces rates that are fair, just, reasonable, and sufficient, and acceptance of the settlement is consistent with the public interest. RCW 34.05.060; 80.28.020; WAC 480-09-465. WUTC v. Washington Natural Gas Company, Docket No. UG-950278 (May 1995).

-- Prudence

Natural gas companies' contracts to purchase gas supply may be subject to prudence review. RCW 80.28.020. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-941408, Third Supplemental Order (October 1995).

The test for prudence is: what would a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision? RCW 80.28.020. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-941408, Third Supplemental Order (October 1995).

Decisions that are subject to a prudence review must be documented sufficiently to demonstrate the information that the company considers in reaching a decision and its reasoning in using that information, to allow a sufficient evaluation of prudence. RCW 80.28.020. WUTC v. Cascade Natural Gas Corporation, Docket No. UG-941408, Third Supplemental Order (October 1995).

-- Regulatory Mechanisms Intended to Encourage Least Cost Planning and Conservation

► See RCW 80.28.025.

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evolves should be consistent with the appropriate and cost-effective development of both demand and supply resources that are reliable and lowest cost in the long term. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Third Supplemental Order (September 1995).

RCW 80.28.020 (cont.)

-- Cost-of-Service; Rate Spread; Rate Design

A Commission finding that accepts a utility's cost study as an indication of costs sufficient to use in establishing rate spread for purposes of a stipulated settlement in a rate proceeding should not be interpreted to indicate the Commission's approval of any costing methodology for future use that was not specifically discussed and approved in the order. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Seventh Supplemental Order (May 1995).

Cost studies do not dictate rates, but, to the extent that one goal of ratemaking is to adopt rates for each customer class that reflect the cost of serving that class, embedded cost of service studies are important tools for comparing the relative contributions of different customer classes to a company's overall costs. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket Nos. UG-940034 and UG-940814, Fifth Supplemental Order (April 1995).

Cost of service studies can be very technical but, because of the need to allocate joint and common costs among various services, they depend to a great extent on principle, policy, and common sense. In the absence of detailed studies demonstrating responsibility for fixed costs, which would allow direct assignment of portions of the costs to particular classes of customers, allocation must depend on principled judgment rather than science. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket Nos. UG-940034 and UG-940814, Fifth Supplemental Order (April 1995).

The Commission is not obligated to translate any given cost study into rates. Because no study "perfectly" reflects "actual" costs of providing service, and because the Commission must consider non-cost factors in determining whether rates are fair, just, reasonable and sufficient, rate spread and design call for the exercise of Commission judgment in light of the best cost information available. RCW 80.28.020. WUTC v. Washington Natural Gas Company, Docket Nos. UG-940034 and UG-940814, Fifth Supplemental Order (April 1995).

RCW 80.28.025 **Encouragement of energy cogeneration, conservation, and production from renewable resources--Consideration of water conservation goals.**

Cross References

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.

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- ▶ Commission policies to provide financial incentives for energy efficiency programs:
See also RCW 80.28.260.

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RCW 80.28.025 (cont.)

Rates established under an experimental periodic rate adjustment mechanism are not permanent rates, and cannot be transferred to the permanent rate schedules unless fully supported in a general rate increase proceeding. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-901183-T; In re Puget Sound Power & Light Company, Docket No. UE-901184-P; WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Order Denying Reconsideration (November 1995).

Ratepayers should not shoulder the burden of risks shifted to them by an experimental regulatory mechanism without receiving demonstrable and commensurate benefits. Any proposals for new approaches to regulation should clearly demonstrate how risks are shared and compensated. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Third Supplemental Order (September 1995).

Proposals for new approaches to regulation of electric companies as a more competitive industry evolves should be consistent with the appropriate and cost-effective development of both demand and supply resources that are reliable and lowest cost in the long term. RCW 80.28.020; 80.28.025. WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Third Supplemental Order (September 1995).

RCW 80.28.030 **Commission may order improved quality of commodity--Water companies, board of health standards.**

When testimony in a hearing on whether the Commission should accept a settlement agreement regarding a water company's rates reveals water quality and service problems which the company verbally commits to improving, the Commission may include in an order accepting the proposed rates instructions to its staff to investigate problems with water quality and service, and to follow up as necessary to ensure compliance with Commission statutes and rules. RCW 80.28.020; 80.28.030; 80.28.040. WUTC v. Washington Water Supply, Inc., d/b/a Whidbey West, Docket No. UW-950174, First Supplemental Order (January 1996).

RCW 80.28.040 **Commission may order improved service--Water companies, noncompliance, receivership.**

When a company does not have accurate records of the depreciated value of its plant in service, the Commission may accept for ratemaking purposes an expert valuation, based on estimates of purchase and installation costs, which is credibly supported in the record. RCW 80.04.250; 80.28.040. WUTC v. Rosario Utilities, LLC., Docket No. UW-951483, Fourth Supplemental Order (November 1996).

RCW 80.28.040, cont.

When testimony in a hearing on whether the Commission should accept a settlement agreement regarding a water company's rates reveals water quality and service problems which the company verbally commits to improving, the Commission may include in an order accepting the proposed rates instructions to its staff to investigate problems with water quality and service, and to follow up as necessary to ensure compliance with Commission statutes and rules. RCW 80.28.020; 80.28.030; 80.28.040. WUTC v. Washington Water Supply, Inc., d/b/a Whidbey West, Docket No. UW-950174, First Supplemental Order (January 1996).

The Commission may request the Department of Health to petition the court to place a water company into receivership when that company fails to comply with a Commission order to improve its service. RCW 80.28.040. Marine View Heights Homeowners' Association v. Marine View Heights, Inc., Docket No. UW-940325 (September 1995).

RCW 80.28.080 **Published rates to be charged--Exceptions.**

A public service company has no discretion to charge other than tariffed rate for service. The law provides no exemption for varying circumstances. RCW 80.28.080. In re Washington Natural Gas Company, Docket No. UG-950450 (August 1995).

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TELECOMMUNICATIONS

RCW 80.36.080 Rates, services, and facilities.

Cross references

- Commission to fix rates and services: See RCW 80.36.140.

If a service is not recovering its costs or is otherwise inappropriately priced, the appropriate response is to reprice the service elements. RCW 80.36.080. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

The Commission has broad authority to regulate the rates, services, facilities, and practices of telecommunications companies in the public interest. RCW 80.01.040; 80.36.080; 80.36.140; 80.04.110. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

EAS traffic is local traffic for purposes of compensation for local interconnection. RCW 80.36.080; 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

Alternate operator service (AOS) companies need not be registered with the Commission as telecommunications companies in order to invoke the jurisdiction of the Commission to consider a complaint that a local exchange company is engaging in anticompetitive conduct in the provision of public payphone services. RCW 80.04.110; 80.36.080; 80.36.180. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

RCW 80.36.140 Rates and services fixed by commission, when.

Cross references

- ▶ Commission determination of value for ratemaking purposes of a utility's property: See RCW 80.04.250.
- ▶ Alternative regulation of telecommunications companies: See RCW 80.36.135.

The Commission will reject a tariff filing that proposes to terminate a competitive service if withdrawal would harm existing competition or hinder the development of competition, in the absence of an appropriate replacement product. RCW 80.36.140; 80.36.330. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

The Commission will reject a tariff filing that proposes to terminate an existing service if withdrawal of the service would not be in the public interest and would result in rates that are not fair, just, reasonable, or sufficient. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

Generally, a telecommunications company may not offer different rates to existing and new customers. RCW 80.36.180. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighteenth and Nineteenth Supplemental Orders (December 1996).

The Commission may determine general principles applicable to several ongoing proceedings in a generic proceeding. Telecommunications Act of 1996; RCW 80.36.140. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

The Commission will make decisions regarding the implementation of local telecommunications competition in Washington state in accordance with the Telecommunications Act of 1996 and consistent with the Commission's announced policies and orders. Decisions regarding pricing policy will be made on this basis, and the Commission will not limit its deliberations in arbitrations under the 1996 Act to methodologies adopted by the FCC. Telecommunications Act of 1996; RCW 80.36.140. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

The Commission may reject a tariff filing that sets out a new general provision (here a general resale provision) while retaining existing provisions differing from the general provision, when the respective applicability of the provisions is not clearly set out. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Seventeenth Supplemental Order (July 1996).

The Commission may grant a utility's request to adopt, for intrastate ratemaking purposes, changes in depreciation methodology, accounting, and depreciation lives, when the Commission concludes that approval of the changes is in the public interest. RCW 80.36.140; WAC 480-120-031. In re U S WEST Communications, Inc., Docket No. UT-940641, Fourth Supplemental Order (May 1995); Fifth Supplemental Order, on Remand (April 1996).

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RCW 80.36.140 (cont.)

The Commission will reject a tariff filing that does not substantially comply with a Commission order. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Seventeenth Supplemental Order (July 1996).

The Commission may consider service quality in setting a public service company's rate of return on equity within a reasonable range. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The Commission may establish a return on equity at the low point of the range of reasonableness in recognition of service quality degradation, as an incentive to the public service company to improve customer service. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The Commission may disallow, for ratemaking purposes, incentive employee compensation expenses which are not shown to benefit the ratepayers. A team award plan in which financial incentives are independent of service incentives, and in which financial rewards may eclipse customer service failures, is not acceptable. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

Yellow Pages directory revenues should be imputed to U S WEST for ratemaking purposes. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

Costs for telecommunications services should be measured from the ground up, i.e., on a long-run, incremental, going-forward basis and without consideration of the actual costs incurred in the past by the company. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

Total Service Long Run Incremental Costs (TSLRIC) are the appropriate measure of costs for a service because they measure the additional costs that are incurred by providing an additional service. TSLRIC therefore represents the economic price floor. If the revenues from a service exceed the TSLRIC of that service, then that service is not being cross-subsidized. If the firm were to stop providing that unit, its revenues would fall by more than its costs. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The Commission uses incremental cost studies primarily to establish price floors for individual services. Rates should at least cover the incremental cost of providing a service. Guarding against cross-subsidy and predatory pricing is the primary function of incremental cost studies. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

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RCW 80.36.140 (cont.)

Incremental cost studies provide a useful tool in determining fair, just, reasonable, and sufficient rates for individual services, but they do not in themselves determine those rates. Other considerations remain an important part of the rate-setting process, such as effectiveness in yielding total revenue requirements under the fair return standard; fairness in the apportionment of total costs of service among different consumers; and efficiency in discouraging wasteful use of services while promoting all justified types and amounts of use, in view of the relationships between costs incurred and benefits received. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

Inclusion of shared and common costs in incremental cost results in a measure of costs that is not a relevant measure of the economic cost of providing the service. Inclusion of shared and common costs in incremental cost results would allow a company to manipulate costing concepts to suit its pricing purposes. It could assign more of the shared costs to services that have captive customers. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

While shared and common costs should not be considered in defining either the price floor or the target for regulated ratemaking, such costs, if they qualify as part of a company's revenue requirement, must be considered in setting rates. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The local loop is not appropriately included in the incremental cost of local exchange service. The local loop facilities are required for nearly every service provided by a local exchange company to a customer. Neither local service nor in-state long distance service nor interstate long distance service nor vertical features can reach a customer without the local loop. Should the company cease to provide any one of these services, its need for the local loop to provide the remaining services would remain. The cost of the local loop, therefore, is not incremental to any one service. It is a shared cost that should be recovered in rates, but no one service is responsible for that recovery. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

For regulatory purposes, cost studies should use the depreciation rates prescribed by the Commission. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

"Fill factors" describe the amount of unused capacity that will be included in the incremental cost of a particular service. The Commission requires public service companies to develop cost estimates using objective fill factors. Any remaining unused capacity is most appropriately treated as a shared cost. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

RCW 80.36.140 (cont.)

In a general rate case, it is appropriate to eliminate extended area service (EAS) additives and fold them into the average statewide rate. The EAS charges have been established principally on the basis of lost toll revenue rather than cost. It is important to consider costs when setting rates and to use valid reasons for departing from costs. RCW 80.36.140; 80.36.850. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The Commission will accept a company's proposal to eliminate a pricing distinction between simple and complex service when it is clear from the evidence that the costs of additional lines do not increase, so the simple/complex distinction is not cost-based. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The factual conclusion that the costs of providing telecommunications service increase as the population density decreases (i.e., that it costs more to serve rural areas) does not, by itself, support a policy decision to adopt zone prices. Absent some compelling reason for zone pricing, the Commission will reject a zone pricing structure and require a statewide average rate. A statewide average rate promotes affordable local telephone service, minimizes rate shock, and provides the company the ability to provide service at rates that exceed the average cost of providing service. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

Imputation tests must be performed to ensure that a telecommunications company does not put a "price squeeze" on competitors that use its bottleneck monopoly services. Unless a bottleneck service is effectively competitive, if it is necessary to the competitor using it then it must be imputed for the provider's competing service at the tariff rate. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

The Common Carrier Line Charge (CCLC), created as a mechanism designed to avoid the rapid and total deloading of non-traffic sensitive (NTS) costs on to the entire class of end users in the state, has outlived its usefulness and should be retired as a specific rate element of switched access. There is no longer a reason to treat one shared cost -- the local loop and NTS-COE -- differently from the many other shared and common costs of the company. To allow the CCLC to continue to exist is to imply, inaccurately, that local exchange services require a "subsidy" from toll. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

A late payment charge is a reasonable way to recover costs imposed upon a telecommunications company and other ratepayers by persons whose payments are not timely. Charges may not be applied to fees billed for third parties unless the company can demonstrate costs incurred thereby. The charge may not be applied to bills for local service until the local service portion is past due for the required period. A company also should allow customers to establish a preferred billing date during the month. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

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RCW 80.36.140 (cont.)

The Commission may reject a tariff compliance filing that falls short of the requirements or conditions of the order requiring it. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., and consolidated U S WEST and GTE interconnection dockets, Docket Nos. UT-941464 et al., Ninth Supplemental Order (March 1996); Tenth Supplemental Order (March 1996).

The Commission may grant a utility's request to adopt, for intrastate ratemaking purposes, changes in depreciation methodology, accounting, and depreciation lives, when the Commission concludes that approval of the changes is consistent with the public interest. RCW 80.36.140; WAC 480-120-031. In re GTE Northwest Incorporated, Docket No. UT-940926 [depreciation accounting changes], Third Supplemental Order (January 1996).

The Commission has the power to apportion responsibility for a general rate increase equitably among the utility's customers. Doing so may involve apportionment of revenue increases in a manner not proposed by the company and even to customers for whom the company has proposed no increase. RCW 80.36.140. WUTC v. U S WEST Communication, Inc., Docket No. UT-950200, Twelfth Supplemental Order (January 1996).

The Commission will not allow a company to re-litigate issues which recently were resolved in another proceeding after extensive hearings held at the company's request unless there is a showing of reasons requiring the duplication of effort or a showing that circumstances have changed. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

The Commission has statutory authority to consider Yellow Pages revenues in determining regulated results of operations under chapter 80.16 RCW and under RCW 80.36.140. The arrangement is specifically permitted under the Modified Final Judgment in United States v. AT&T, 552 F.Supp. 131, 194 (D.C. Cir. 1982), and the company agreed to the present arrangement of including revenues from Yellow Page advertising in attribution to regulated results of operations in Docket No. UT-89-3524-AT, the merger proceeding resulting in the creation of U S WEST. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

In general rate case, the Commission generally will allow competitors of a utility who are the utility's customers, wholly dependent upon the utility for underlying services that enable them to be competitors, to present evidence of the effects upon them of the utility's pricing structure. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

RCW 80.36.140 (cont.)

A utility's use of its income, wise or unwise, generally is not relevant to a general rate case proceeding. The underlying issues are whether depreciation reasonably recovers capital investment over the life of the asset, whether the company's opportunity to earn meets the pertinent tests, and whether the company is investing sufficiently in capital assets to provide adequate service. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

The Commission may order a telecommunications company to file a tariff to correct a practice affecting rates or service under the authority granted it by RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Sixth Supplemental Order (December 1995).

RCW 80.36.140 gives the Commission extremely broad powers to investigate the practices of a company and to order a wide range of relief. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Sixth Supplemental Order (December 1995).

The telecommunications industry itself should assume primary responsibility for reaching consensus on reasonable solutions to many of the issues surrounding local interconnection. However, the Commission realizes that the industry necessarily and appropriately looks to the Commission to provide some leadership and direction during the transition to a competitive industry structure. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

The Commission has broad authority to regulate the rates, services, facilities, and practices of telecommunications companies in the public interest. RCW 80.01.040; 80.36.080; 80.36.140; 80.04.110. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

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RCW 80.36.140 (cont.)

A rate mechanism for compensating local exchange companies for terminating traffic from other local exchange companies should be compatible with state telecommunications policies set out in RCW 80.36.300, including preserving universal telecommunications service and promoting diversity in the supply of telecommunications services and products. RCW 80.36.300; 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

EAS traffic is local traffic for purposes of compensation for local interconnection. RCW 80.36.080; 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

Cost studies on which a company bases its rate proposals must use proper measures of economic cost and be accompanied by sufficient documentation to enable the Commission to conduct a fair review of the company's costs. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

The Commission generally requires a total service long-run incremental cost ("TSLRIC") study to support cost figures for telecommunications services. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

The Commission may grant a utility's request to adopt, for intrastate ratemaking purposes, changes in depreciation methodology, accounting, and depreciation lives, when the Commission concludes that approval of the changes is in the public interest. RCW 80.36.140; WAC 480-120-031. In re U S WEST Communications, Inc., Docket No. UT-940641, Fourth Supplemental Order (May 1995); Fifth Supplemental Order, on Remand (April 1996).

The Commission has jurisdiction to order a delay in implementing the mandatory use of a new area code. In deciding whether to extend the time for implementation, it will weigh the evidence of hardship arising from the current implementation schedule against evidence of the consequences of delaying implementation. RCW 80.36.140. WUTC v. U S WEST Communications, Inc., Docket

No. UT-950446 (April 1995).

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RCW 80.36.140 (cont.)

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission does not believe it is the proper authority to judge whether advertising is unfair to competitors. The courts are a better place to resolve claims of unfair advertising. RCW 80.36.140. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission ordinarily refrains from interfering in contracts between a local exchange carrier and its payphone location providers. RCW 80.36.140. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission may deny a petition to make an adjustment between rate cases to one item of investor supplied working capital. Investor supplied working capital should be reviewed on a comprehensive, not piecemeal, basis. RCW 80.36.140. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (Consolidated) (January 1995).

The inclusion in rate base of an investor-supplied pension asset that is one element of working capital, even if otherwise appropriate, should be done only as part of a comprehensive working capital analysis, and not on a piecemeal basis. To do otherwise would allow a company to pick and choose among working capital adjustments, petitioning the Commission for recognition of increases without necessarily identifying offsetting decreases. RCW 80.36.140. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (Consolidated) (January 1995).

The Commission has used the investor supplied working capital approach in most general rate increase proceedings in recent years. It generally will not reflect directly in rate base such assets as materials and supplies and other deferred debits, and will include these items in the rate base only to the extent they have been demonstrated to be investor supplied. RCW 80.36.140. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (Consolidated) (January 1995).

RCW 80.36.145 **Formal investigation and fact-finding--Alternative to full adjudicative proceeding.**

A formal investigation and fact finding (FIFF) authorized by RCW 80.36.145 is not an adjudicative proceeding under the Administrative Procedure Act. RCW 34.05.010; RCW 80.36.145; WAC 480-09-520. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-960248, Order rejecting pleadings (August 1996).

RCW 80.36.145 (cont.)

RCW 80.36.145 authorizes the Commission to use formal investigation and fact finding (FIFF) instead of adjudications under the Administrative Procedure Act when it determines that use of a FIFF is in the public interest and that a full hearing is not necessary to develop the facts relevant to the proceeding and the positions of the parties. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-960248, Order rejecting pleadings (August 1996).

RCW 80.36.170 Unreasonable preferences prohibited.

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

RCW 80.36.180 Rate discrimination prohibited.

A telecommunications company may not maintain one compensation scheme with one telecommunications company relating to traffic it does not compete for, and another compensation scheme for a different telecommunications company relating to traffic it does compete for. RCW 80.36.186; 80.36.180. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

Alternate operator service (AOS) companies need not be registered with the Commission as telecommunications companies in order to invoke the jurisdiction of the Commission to consider a complaint that a local exchange company is engaging in anticompetitive conduct in the provision of public payphone services. RCW 80.04.110; 80.36.080; 80.36.180. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

If a local exchange carrier's competitors are dependent upon the carrier's monopoly service elements, the carrier must impute the price of those elements to itself at the same level that it prices the elements for sale to dependent competitors. The Commission requires imputation for determining the appropriate imputed cost and price floor for retail services in a market where the monopoly provider of the bottleneck network facilities competes against a competitor at the retail level. RCW 80.36.180. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

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RCW 80.36.186 Pricing of or access to noncompetitive services - Unreasonable preference or advantage prohibited.

A telecommunications company may not maintain one compensation scheme with one telecommunications company relating to traffic it does not compete for, and another compensation scheme for a different telecommunications company relating to traffic it does compete for. RCW 80.36.186; 80.36.180. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

The Commission's powers to protect customers and competitors from discrimination are very broad under RCW 80.04.110 and RCW 80.36.080, .140, .170, .180, and .186. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174 (March 1995).

RCW 80.36.300 Policy declaration.

Cross reference:

- Alternative regulation of telecommunications companies: See RCW 80.36.135.

The Commission is concerned, consistent with state and federal law, that competition be nurtured. However, the Commission finds no obligation to direct that rates be structured to foster the profitability of reselling. 47 U.S.C. § 151, *et seq.*; RCW 80.36.300. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighteenth and Nineteenth Supplemental Orders (December 1996).

The Commission will approve petitions for competitive telecommunications company classification if it finds the services offered or proposed to be offered are subject to effective competition. Effective competition means the petitioning company's customers have reasonably available alternatives to petitioner, and the petitioning company does not have a significant captive customer base. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The focus is on end use customers when determining whether there is "effective competition" in a market. If a new entrant local exchange company cannot hold end use customers "captive," it cannot hold a connecting carrier captive for traffic terminating on the new entrant's network. RCW 80.36.320. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The relevant market for competitive intra-exchange telecommunications service is the state of Washington. The Commission generally will not restrict a petitioner that seeks classification as a competitive telecommunications company to serving only the limited area it initially proposes to serve. Doing so would needlessly subject the Commission and companies to multiple petitions and

amendments of a competitive company classification. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

RCW 80.36.300 (cont.)

The Commission generally will require a new entrant alternative local exchange company (ALEC) which is classified as a competitive telecommunications company to file price lists for terminating access service in accordance with state statute at rates not to exceed those charged by the dominant local exchange company. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The Commission finds that the following goals are appropriate as the telecommunications industry transitions to a competitive environment: (1) minimize duplication by requiring resale and unbundling; (2) promote entrants' efficient use of existing networks; (3) promote development of networks through private investment so competitors have comparable risks and rewards; (4) promote greater responsiveness to specialized needs than feasible for a single provider -- i.e., encourage "niche" providers. RCW 80.36.300. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

A rate mechanism for compensating local exchange companies for terminating traffic from other local exchange companies should be compatible with state telecommunications policies set out in RCW 80.36.300, including preserving universal telecommunications service and promoting diversity in the supply of telecommunications services and products. RCW 80.36.300; 80.36.140. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

A rate mechanism for compensating local exchange companies for terminating traffic from other local exchange companies that either imposes extremely high barriers to entry of competitors or substantially increases the retail price of local service conflicts with state policy goals set out in RCW 80.36.300. WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Fourth Supplemental Order (October 1995).

It is not appropriate for the Commission to approve a Universal Service Fund Administration Agreement negotiated between the Washington Exchange Carrier Association and one new entrant into the local exchange market as the standard form to be used between WECA and all new entrants. RCW 80.36.300. WUTC v. Pacific Northwest Bell Telephone Company, Docket No. U-85-23 et al., Eighty-second Supplemental Order (June 1995).

Chapter 80.36 RCW

RCW 80.36.320 **Classification as competitive telecommunications companies,
services--Factors considered--Minimal regulation--Equal access--
Reclassification.**

The Commission will approve petitions for competitive telecommunications company classification if it finds the services offered or proposed to be offered are subject to effective competition. Effective competition means the petitioning company's customers have reasonably available alternatives to petitioner, and the petitioning company does not have a significant captive customer base. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The focus is on end use customers when determining whether there is "effective competition" in a market. If a new entrant local exchange company cannot hold end use customers "captive," it cannot hold a connecting carrier captive for traffic terminating on the new entrant's network. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The relevant market for competitive intra-exchange telecommunications service is the state of Washington. The Commission generally will not restrict a petitioner that seeks classification as a competitive telecommunications company to serving only the limited area it initially proposes to serve. Doing so would needlessly subject the Commission and companies to multiple petitions and amendments of a competitive company classification. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The Commission generally will require a new entrant alternative local exchange company (ALEC) which is classified as a competitive telecommunications company to file price lists for terminating access service in accordance with state statute at rates not to exceed those charged by the dominant local exchange company. RCW 80.36.320. In re MFS Intelenet of Washington, Inc., Docket No. UT-941561 (November 1996).

The Commission will approve a petition for classification as a competitive telecommunications company if it finds that the services offered or proposed be offered are subject to effective competition. RCW 80.36.320. In re Electric Lightwave, Inc., Docket No. UT-940403 (January 1995).

That competing carriers must use company A's access service to complete their customers' local calls to company A's customers does not preclude classifying company A as a competitive telecommunications company when there are numerous alternative providers of functionally equivalent intra-state intra-exchange telecommunications services in the relevant market. RCW 80.36.320. In re Electric Lightwave, Inc., Docket No. UT-940403 (January 1995).

Chapter 80.36 RCW

RCW 80.36.330 Classification as competitive telecommunications companies, services--Effective competition defined--Prices and rates--Reclassification.

The Commission will reject a tariff filing that proposes to terminate a competitive service if withdrawal would harm existing competition or hinder the development of competition, in the absence of an appropriate replacement product. RCW 80.36.140; 80.36.330. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

The Commission has the power to examine the proposed withdrawal of competitive services, to determine whether withdrawal would have anticompetitive or other impermissible effects. RCW 80.04.130; 80.36.330. WUTC v. U S WEST Communications, Inc., Docket No. UT-960126, Fifth Supplemental Order (December 1996).

RCW 80.36.340 Banded rates.

Banded rates are an appropriate tool that the Commission may use to allow a telecommunications company to respond to competition while still protecting captive customers from monopoly pricing. RCW 80.36.340; WAC 480-80-045. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

RCW 80.36.522 Alternate operator service companies--Registration--Penalties

Compliance is the primary function of Commission penalty assessments and the aim of Commission enforcement efforts. RCW 80.01.040; 80.36.522. WUTC v. International Pacific, Inc., Docket No. UT-911482, Ninth Supplemental Order (January 1995).

RCW 80-36-850 Registration of new companies.

In a general rate case, it is appropriate to eliminate extended area service (EAS) additives and fold them into the average statewide rate. The EAS charges have been established principally on the basis of lost toll revenue rather than cost. It is important to consider costs when setting rates and to use valid reasons for departing from costs. RCW 80.36.140; 80.36.850. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

CHAPTER 80.54 RCW

ATTACHMENTS TO TRANSMISSION FACILITIES

RCW 80.54.020 **Regulation of rates, terms, and conditions--Criteria.**

The Commission has no jurisdiction to regulate a public utility district's pole attachment rates and conditions. RCW 80.54.020 must be read in context with RCW 80.54.030, which makes it clear that Commission jurisdiction extends only to complaints against utility companies. TCG Seattle, et al. v. GTE Northwest Incorporated and Snohomish County Public Utility District Number 1, Docket No. UT-941523 (April 1995).

RCW 80.54.030 **Commission order fixing rates, terms, or conditions.**

The Commission has no jurisdiction to regulate a public utility district's pole attachment rates and conditions. RCW 80.54.020 must be read in context with RCW 80.54.030, which makes it clear that Commission jurisdiction extends only to complaints against utility companies. TCG Seattle, et al. v. GTE Northwest Incorporated and Snohomish County Public Utility District Number 1, Docket No. UT-941523 (April 1995).

CHAPTER 81.108 RCW

LOW-LEVEL RADIOACTIVE WASTE SITES

RCW 81.108.050 **Maximum rates--Revisions.**

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620, Sixth Supplemental Order (December 1995).

When a company uses an operating ratio methodology to set rates, in which recovery of and return on capital is covered by the margin, rather than being included in the calculation of the margin, any migration of capital needs to operating expenses raises concerns that the company may be gaming the formula, and may be disallowed. RCW 81.108.050. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620, Sixth Supplemental Order (December 1995).

The Commission may accept a settlement agreement that resolves some of the issues in a rate proceeding when it finds the proposed settlement to be consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620, Fifth Supplemental Order (October 1995).

CHAPTER 480-09 WAC

PROCEDURE

WAC 480-09-015 Submission of "confidential" information.

The purpose behind the confidentiality provision of RCW 80.04.095 and WAC 480-09-015 is to encourage the disclosure of information necessary to the prosecution of a case by reducing the risk that the information will be disclosed to persons able to use the information in a competitive or otherwise hostile manner toward the disclosing party. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighth Supplemental Order (October 1995).

WAC 480-09-120 Filing and service.

The Commission may accept a party's certification of good faith compliance with Commission rules of practice and procedure, unless there is some objective indication of failure to comply. WAC 480-09-120. Northwest Payphone Association, et al. v. U S WEST Communications, Inc., Docket No. UT-920174, Sixth Supplemental Order (June 1995).

WAC 480-09-230 Declaratory orders.

Cross References

- Declaratory order by agency: See RCW 34.05.230.

WAC 480-09-340 Compliance filings.

The Commission will reject compliance filings which are not in accordance with the Commission's order directing the filings. WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eighteenth and Nineteenth Supplemental Orders (December 1996).

The Commission may reject a tariff filing that sets out a new general provision (here a general resale provision) while retaining existing provisions differing from the general provision, when the respective applicability of the provisions is not clearly set out. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Seventeenth Supplemental Order (July 1996).

The Commission will reject a tariff filing that does not substantially comply with a Commission order. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Seventeenth Supplemental Order (July 1996).

The Commission will accept compliance tariff revisions that are in accordance with the Commission order authorizing the filing. WAC 480-09-340. WUTC v. U S WEST Communications, Inc., and consolidated U S WEST and GTE interconnection dockets, Docket

Nos. UT-941464 et al., Eleventh Supplemental Order (May 1996).

WAC 480-09-340, cont.

The Commission may allow a compliance filing to go into effect on a temporary or interim basis, giving the parties the opportunity to review and comment upon the filing and provide underlying support for their comments. WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Sixteenth Supplemental Order (May 1996).

The Commission will reject a compliance tariff filing that is beyond the scope of the filing permitted by the order authorizing or directing a compliance filing. WAC 480-09-340. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Sixteenth Supplemental Order (May 1996).

The Commission may reject a tariff compliance filing that falls short of the requirements or conditions of the order requiring it. RCW 80.36.140; WAC 480-09-340. WUTC v. U S WEST Communications, Inc., and consolidated U S WEST and GTE interconnection dockets, Docket Nos. UT-941464 et al., Ninth Supplemental Order (March 1996); Tenth Supplemental Order (March 1996).

WAC 480-09-420 Pleadings--Applications for authority--Protests.

The Commission will dismiss a complaint if the complainant fails to present a prima facie case. RCW 80.04.110; WAC 480-09-420. GTE Northwest Incorporated v. Whidbey Telephone Company, Docket No. UT-950277, Fifth Supplemental Order (April 1996).

WAC 480-09-430 Intervention.

Under WAC 480-09-430, a petition to intervene must demonstrate a substantial interest in the subject matter of the hearing, or that intervention is in the public interest. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Tenth Supplemental Order (October 1996).

WAC 480-09-430 prohibits intervention after a hearing has commenced except for good cause. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Tenth Supplemental Order (October 1996).

The Commission generally will not allow intervention in an arbitration under the Telecommunications Act of 1996. In re Petition[s] for Arbitration of an Interconnection Agreement, Docket Nos. UT-960307, UT-960309, UT-960310, UT-960323, UT-960326, and UT-960332 (October 1996).

It is within the Commission's discretion whether to grant or deny intervention. RCW

Chapter 480-09 WAC

34.05.443; WAC 480-09-430. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fifth Supplemental Order (July 1996).

WAC 480-09-430, cont.

A petition to intervene which seeks to broaden the issues must be considered one for special rather than for general intervention. WAC 480-09-430. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fifth Supplemental Order (July 1996).

A petition for special intervention will be denied if it does not satisfy the requirements of the Commission rule governing petitions for special intervention. WAC 480-09-430(2). In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fifth Supplemental Order (July 1996).

Although the Commission generally does not grant intervention to unregulated potential competitors of a regulated company, it may grant such competitors intervention for the limited purpose of assisting the Commission in evaluating the economic effects of a merger upon competition generally in an industry, when in the Commission's judgment their input may be of assistance. WAC 480-09-430(3). In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fourth Supplemental Order (July 1996).

WAC 480-09-465 Settlement.

The Commission will accept a proposed stipulation that resolves all of the issues presented before the Commission in a manner consistent with the public interest. WAC 480-09-465. WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Fifth Supplemental Order (November 1996).

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 80.28.020; WAC 480-09-465. In re Cascade Natural Gas Corporation, Docket No. UG-950326; WUTC v. Cascade Natural Gas Corporation, Docket No. UG-951415; Fourth Supplemental Order (July 1996).

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 80.28.020; WAC 480-09-465. WUTC v. Washington Water Supply, Inc., d/b/a Whidbey West, Docket No. UW-950174, First Supplemental Order (January 1996).

The Commission may accept a settlement agreement in a rate proceeding when it finds that the proposed settlement is consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620, Sixth Supplemental Order (December 1995).

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WAC 480-09-465 (cont.)

The Commission may accept a settlement agreement that resolves some of the issues in a rate proceeding when it finds the proposed settlement to be consistent with the public interest. RCW 81.108.050; WAC 480-09-465. WUTC v. US Ecology, Inc., Docket No. UR-950619; In re US Ecology, Inc., Docket No. UR-950620, Fifth Supplemental Order (October 1995).

The Commission may approve a settlement in a ratemaking proceeding when the settlement results in rates that are fair, just and reasonable. WAC 480-09-465. WUTC v. Puget Sound Power & Light Company, Docket No. UE-950618, Third Supplemental Order (September 1995).

The Commission will accept a settlement agreement as to the appropriate level of a utility's rates when the proposed rates are cost-based, the proposal produces rates that are fair, just, reasonable, and sufficient, and acceptance of the settlement is consistent with the public interest. RCW 34.05.060; 80.28.020; WAC 480-09-465. WUTC v. Washington Natural Gas Company, Docket No. UG-950278 (May 1995).

The Commission generally encourages the settlement of matters before it, because settlement eliminates the need for protracted litigation, and saves both time and money for all parties. RCW 34.05.060; WAC 480-09-465. In re Puget Sound Power & Light Company, Docket No. UE-950195 (May 1995).

The Commission will accept a stipulated settlement that is consistent with the public interest and meets relevant statutory tests. RCW 34.05.060; WAC 480-09-465. In re Puget Sound Power & Light Company, Docket No. UE-950195 (May 1995).

The Commission may accept a proposed settlement agreement that it determines is consistent with the public interest. RCW 34.05.060; WAC 480-09-465. WUTC v. Fone America, Inc.; U.S. Long Distance, Inc.; Diversified Service Co.; SMJ Communications, Inc.; Interwest Telecom Service; Paytel Northwest, Inc., Docket Nos. UT-911483, UT-940923, UT-9401133, UT-9401134, UT-941135, and UT-941136 (consolidated) (January 1995).

Settlements, by definition, balance interests and allow each of the parties to satisfy the interests that are most important. The Commission may accept a proposed settlement agreement that it determines is consistent with the public interest. RCW 34.05.060; WAC 480-09-465. WUTC v. International Pacific, Inc., Docket No. UT-911482, Ninth Supplemental Order (January 1995).

WAC 480-09-480 Methods for obtaining data in adjudicative proceedings.

The Commission may compel a party to provide relevant information in response to another party's data request. WAC 480-09-480. WUTC v. Puget Sound Power & Light Company, Docket No. UE-960299, Sixth Supplemental Order (August 1996).

In extraordinary circumstances, access by parties to confidential information in a Commission proceeding may be restricted, on a need to know basis. WAC 480-09-480. In re Puget Sound Power & Light Company, Docket No. UE-951270; In re Puget Sound Power & Light Company and Washington Natural Gas Company, Docket No. UE-960195; Fourth Supplemental Order (July 1996).

The Commission has not adopted Civil Rule No. 26 for application to its proceedings because of the differences between civil litigation and the Commission's administrative process. However, the Commission may look to the rule for guidance in a particular matter. WAC 480-09-480. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

The Commission expects parties to a proceeding to attempt informally to resolve disputes regarding data requests. When the parties to a dispute fail to act to settle it, the Commission may resolve it. WAC 480-09-480. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Eleventh Supplemental Order (January 1996).

WAC 480-09-520 Formal investigation and fact-finding.

A formal investigation and fact finding (FIFF) authorized by RCW 80.36.145 is not an adjudicative proceeding under the Administrative Procedure Act. RCW 34.05.010; RCW 80.36.145; WAC 480-09-520. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-960248, Order rejecting pleadings (August 1996).

In a formal investigation and fact finding (FIFF), the Commission may reject pleadings which are not authorized under WAC 480-09-520. In re AT&T Communications of the Pacific Northwest, Inc., Docket No. UT-960248, Order rejecting pleadings (August 1996).

WAC 480-09-610 Consolidation of proceedings.

The Commission may consolidate for hearing and decision proceedings involving related facts or principles of law. WAC 480-09-610. In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale, Docket Nos. UT-960369, UT-960370, and UT-960371 (November 1996).

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WAC 480-09-760 Interlocutory orders.

Commission review of an administrative law judge's interlocutory order which would totally exclude a party is appropriate when the issue of the Commission's jurisdiction over the party is significant and later Commission reversal of the order could result in substantial cost and delay. WAC 480-09-760. TCG Seattle, et al. v. GTE Northwest Incorporated and Snohomish County Public Utility District Number 1, Docket No. UT-941523 (April 1995).

WAC 480-09-800 Stay.

The Commission may grant a stay of the effectiveness of a final order when there is a need to preserve the status quo while the parties evaluate new facts which might cause them to request reopening or modification. RCW 34.05.467; WAC 480-09-800. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Eighth Supplemental Order (October 1995).

WAC 480-09-810 Reconsideration.

The Commission may grant reconsideration to clarify a final order. RCW 34.05.470; WAC 480-09-810.

WUTC v. U S WEST Communications, Inc., Docket No. UT-941464; TCG Seattle and Digital Direct of Seattle, Inc. v. U S WEST Communications, Inc., Docket No. UT-941465; TCG Seattle v. GTE Northwest Incorporated, Docket No. UT-950146; Electric Lightwave, Inc. v. GTE Northwest Incorporated, Docket No. UT-950265 (consolidated), [Interconnection case] Sixth Supplemental Order (December 1995). WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Seventh Supplemental Order (May 1995).

It is inappropriate in an answer to a petition for reconsideration to cite to facts that are not in the record. Because the Commission cannot lawfully consider evidence outside the record, it cannot allow parties to recite such asserted "facts" for its consideration. RCW 34.05.461; 480-09-810. WUTC v. Washington Natural Gas Company, Docket No. UG-940814, Seventh Supplemental Order (May 1995).

CHAPTER 480-80 WAC

UTILITIES GENERAL - TARIFFS

WAC 480-80-125 Notice by utility to customers concerning hearing.

The Commission's requirement of customer notice is intended to give customers notice that a significant rate increase is pending and reasonable notice of its general scope and magnitude so they may participate in the decision to suspend, which the Commission may make without hearing. It is not intended to amplify the legal requirements of notices of hearing or to grant additional procedural rights, nor is it intended -- nor can it in practice -- list every potential rate change. RCW 34.05.434; RCW 80.04.110; WAC 480-80-125. WUTC v. U S WEST Communication, Inc., Docket No. UT-950200, Twelfth Supplemental Order (January 1996).

The Commission's customer notice does not give any person substantive or procedural rights. A customer has no right to redress for failure of the customer notice to specify any one possible rate increase. WAC 480-80-125. WUTC v. U S WEST Communication, Inc., Docket No. UT-950200, Twelfth Supplemental Order (January 1996).

WAC 480-80-045 Filing of banded tariffs.

Banded rates are an appropriate tool that the Commission may use to allow a telecommunications company to respond to competition while still protecting captive customers from monopoly pricing. RCW 80.36.340; WAC 480-80-045. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

WAC 480-80-335 Special contracts for electric, water, and natural gas utilities.

When a special contract is entered into which is not within an approved rate band, the Commission will review the contract when it is entered into. In that situation, the Commission's decision is based upon the circumstances which exist at the time of the Commission's consideration of the contract. The Commission considers all relevant information before it. WAC 480-80-335. WUTC v. Puget Sound Power & Light Company, Docket No. UE-960299, Sixth Supplemental Order (August 1996).

The prudence of a decision to enter into a special contract is a separate issue from whether the contract should be approved under WAC 480-80-335. A prudence determination involves consideration of numerous factors that are difficult to review adequately outside a general rate case. WAC 480-80-335 provides for separate handling of ratemaking and contract approval matters. WUTC v. Puget Sound Power & Light Company, Docket No. UE-960299, Sixth Supplemental Order (August 1996).

CHAPTER 480-90 WAC

GAS COMPANIES - OPERATIONS

WAC 480-90-191 Least cost planning.

The Commission generally will accept a least cost plan that meets the minimum requirements of the Commission's least cost plan rule, WAC 480-90-191. In re Washington Natural Gas Company, Docket No. UG-951406, Commission letter (August 1996).

By acknowledging receipt of a company's integrated resource plan and finding it in compliance with WAC 480-90-191, the Commission does not preapprove for ratemaking purposes any expenditures identified in the plan or its action plan elements. In re Cascade Natural Gas Corporation, Docket No. UG-940739 (February 1995).

Chapter 480-100 WAC

ELECTRIC COMPANIES - OPERATIONS

WAC 480-100-251 Least cost planning.

Cross references

- ▶ Rate setting by Commission: See RCW 80.28.020 (gas/electric/water).
- ▶ Burden on utility to show rates are just, fair, reasonable: See RCW 80.04.130.
- ▶ Commission shall adopt policies to encourage cogeneration, conservation, and production from renewables: See RCW 80.28.025. See also RCW 80.28.260.

The Commission's least-cost planning rule for electric companies requires that the long-range least-cost plan, and the action plan instrumental to it, meet current and future needs at the lowest cost to the utility **and** its ratepayers. While "cost" properly can and should consider factors that cannot be strictly denominated in dollars, consideration of such factors must be equitably applied to reflect the perspectives of both the utility **and** its ratepayers. Otherwise, the plan cannot be considered to achieve lowest cost (in its broadest definition) from the joint perspective of the utility **and** its ratepayers. WAC 480-100-251. In re Pacificorp, Docket No. UE-940500, Commission Letter of Comment (February 1995).

It is appropriate for utilities to position themselves to compete successfully in an industry that is undergoing rapid change and increasing levels of competition, but such positioning should not expose current and future ratepayers of the company to greater long-term costs. If ratepayers are to bear such costs, they must receive a commensurate benefit, either in terms of reduction or elimination of some identifiable risk, or of some other identifiable, even if non-quantifiable, factor. A utility's least cost plan should clearly demonstrate the benefit. WAC 480-100-251. In re Pacificorp, Docket No. UE-940500, Commission Letter of Comment (February 1995).

While a utility should consider rate impacts in the design of programs intended to develop resources found to be cost-effective from a total resource cost perspective, use of a rate impact measure to evaluate the cost-effectiveness of conservation investments is improper. A rate impact measure is not consistent with a calculation of cost-effectiveness of conservation investments, in the sense this term is used in WAC 480-100-251(3)(d). In re Pacificorp, Docket No. UE-940500, Commission Letter of Comment (February 1995).

CHAPTER 480-120 WAC

TELEPHONE COMPANIES

WAC 480-120-031 Accounting.

The Commission may grant a utility's request to adopt, for intrastate ratemaking purposes, changes in depreciation methodology, accounting, and depreciation lives, when the Commission concludes that approval of the changes is consistent with the public interest. RCW 80.36.140; WAC 480-120-031. In re GTE Northwest Incorporated, Docket No. UT-940926 [depreciation accounting changes], Third Supplemental Order (January 1996).

The Commission may grant a utility's request to adopt, for intrastate ratemaking purposes, changes in depreciation methodology, accounting, and depreciation lives, when the Commission concludes that approval of the changes is in the public interest. RCW 80.36.140; WAC 480-120-031. In re U S WEST Communications, Inc., Docket No. UT-940641, Fourth Supplemental Order (May 1995); Fifth Supplemental Order, on Remand (April 1996).

When the Commission has accepted a company's proposed date for implementing a FASB accounting standard for post-retirement benefits (SFAS 106) which is consistent with FASB and FCC required implementation, it will not approve a requested change to an earlier implementation date when the company has not demonstrated that the public will benefit from early adoption. WAC 480-120-031. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (consolidated) (January 1995).

Generally, tax expense should be shown on an actual basis, and when tax expense is recognized on a deferred basis, the deferred amounts contributed by ratepayers through rates should be attributed to them through a reduction in rate base. Another option is to include the deferred taxes as zero cost capital in the determination of authorized rate of return. In either case, ratepayers are given full credit for the deferred tax expense recognized in rates, which has not been paid or obligated to the federal government. WAC 480-120-031. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (consolidated) (January 1995).

The Commission may approve a company's use for accounting purposes of a FASB accounting standard for post-employment benefits (SFAS 112) that is limited to the items and methods of calculation proposed by the company. WAC 480-120-031. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (consolidated) (January 1995).

The expenses associated with liability for disability and workers' compensation claims are known and measurable for accounting purposes when the disabling event has already occurred, so that the fact of the obligation is certain, and the amounts of the obligation for medical expenses, disability, etc., are subject to reasonable projection. WAC 480-120-031. In re U S WEST Communications, Inc., Docket Nos. UT-930074, UT-930307, & UT-931378 (consolidated) (January 1995).

WAC 480-120-051 Availability of service--Application for and installation of service.

The Commission may order record-keeping and reporting requirements that will provide information sufficient to verify compliance with Commission service quality rules and afford the Commission the opportunity to pursue enforcement for violations of those rules. WAC 480-120-051; 480-120-520. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

WAC 480-120-520 Major outages and service interruptions.

The Commission may order record-keeping and reporting requirements that will provide information sufficient to verify compliance with Commission service quality rules and afford the Commission the opportunity to pursue enforcement for violations of those rules. WAC 480-120-051; 480-120-520. WUTC v. U S WEST Communications, Inc., Docket No. UT-950200, Fifteenth Supplemental Order (April 1996).

CHAPTER 480-143 WAC

COMMISSION GENERAL--TRANSFERS OF PROPERTY

WAC 480-143-010 Sale, lease or assignment of property.

When two public service companies have canceled their agreement to merge, the Commission will withdraw its approval of the merger. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket Nos. UE-941053 and UE-941054, Tenth Supplemental Order (August 1996).

The Commission may authorize and approve a merger in accordance with the terms of a settlement agreement when it finds that the merger, under the terms set out in the settlement agreement, is consistent with the public interest. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Seventh Supplemental Order (September 1995).

In determining whether a sale of local telephone exchanges is consistent with the public interest, the Commission will consider, among other factors, the effects of the sale on customers in the sale exchange, on remaining customers of the purchaser, on remaining customers of the seller, and on interexchange carriers. RCW 80.12.040; WAC 480-143-010. In re Telephone Utilities of Washington, Inc., d/b/a PTI Communications, Docket No. UT-940700; In re U S WEST Communications, Inc., Docket No. UT-940701, Third Supplemental Order (June 1995).

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The Commission may authorize and approve a merger in accordance with the terms of a settlement agreement when it finds that the merger, under the terms set out in the settlement agreement, is consistent with the public interest. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket No. UE-941053; In re The Washington Water Power Company, Docket No. UE-941054, Seventh Supplemental Order (September 1995).

WAC 480-143-050 Transaction must be consistent with public interest.

When two public service companies have canceled their agreement to merge, the Commission will withdraw its approval of the merger. RCW 80.12.040; WAC 480-143-010; WAC 480-143-050. In re The Washington Water Power Company and Sierra Pacific Power Company, et al., Docket Nos. UE-941053 and UE-941054, Tenth Supplemental Order (August 1996).

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